

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:02CR3194
)	
Plaintiff,)	MEMORANDUM
v.)	AND ORDER
)	
JOHN R. FREES,)	
)	
Defendant.)	

This matter is before the court on the clerk's recent memo (filing 62) asking whether the defendant may proceed in forma pauperis on appeal. I conclude after examining the court file that the clerk has incorrectly docketed as a notice of appeal (filing 61) a document that the defendant labeled "certificate of appealability".

It is clear to me that the document was not intended either as a motion for a certificate of appealability¹ or as a notice of appeal. The document is captioned "John Frees Pro-Se, Petitioner versus Richard Kopf (U.S.A.), Respondent," and it seeks a determination that I violated the defendant's constitutional rights when I recently denied his motion for copies of court records. The document includes a reference to the instant case, but the caption also includes a blank line for a new case number "to be assigned by the clerk." I therefore will take no action on the so-called "notice of appeal" in this case, but will direct the clerk to file a duplicate of the document as a pro se complaint in a separate civil action.

¹ I previously determined that a pro se notice of appeal that the defendant filed from his criminal conviction was erroneously docketed as a § 2255 motion by the clerk. Because the notice of appeal was out of time, I certified that it was not taken in good faith and denied the defendant leave to proceed in forma pauperis. The Court of Appeals subsequently dismissed the appeal as untimely. In short, this case does not involve a § 2255 motion, despite what is shown on the docket sheet.

Accordingly, in response to the clerk's memo (filing 62),

IT IS ORDERED that the clerk of the court shall file a duplicate of filing 61 as a pro se complaint in a separate civil action.

January 23, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge